

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DAVID W. RITTEN)	
Claimant)	
VS.)	
)	Docket No. 241,218
MIDWEST BUSINESS MACHINES, INC.)	
Respondent)	
AND)	
)	
EMPLOYERS MUTUAL CASUALTY COMPANY)	
Insurance Carrier)	

ORDER

Claimant appeals from the March 6, 2000, Order of Administrative Law Judge Bryce D. Benedict. The Order denied claimant the requested medical treatment.

ISSUES

- (1) Did claimant suffer accidental injury on the date alleged?
- (2) Did claimant's accidental injury arise out of and in the course of his employment?
- (3) Is claimant entitled to medical treatment, including surgery, for injuries resulting from the accident?
- (4) Is claimant entitled to temporary total disability benefits after surgery?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board finds as follows:

Issue Nos. 3 and 4, listed above, do not constitute issues over which the Appeals Board has jurisdiction on appeal from preliminary hearings. Claimant's entitlement to medical treatment and claimant's entitlement to temporary total disability compensation are controlled by K.S.A. 1999 Supp. 44-534a. Both issues are within the authority and jurisdiction of an administrative law judge at preliminary hearings.

The remaining issues of whether claimant suffered accidental injury and whether claimant's accidental injury arose out of and in the course of his employment are issues over which the Appeals Board takes jurisdiction on appeal from preliminary hearings. See K.S.A. 1999 Supp. 44-534a and K.S.A. 1999 Supp. 44-551.

Claimant originally suffered accidental injury in 1993 when he fell out of a semitrailer truck onto a concrete floor. At that time, claimant suffered a broken elbow and severely injured his back. Claimant underwent lengthy treatment for his back injuries, with the treatment continuing into 1998. Claimant was diagnosed with a herniated nucleus pulposus at T6-7 from the fall.

In April 1997, claimant underwent a splenectomy in order to reduce some of the thoracic spine pain claimant was experiencing. In January 1998, claimant slipped and fell on ice, reinjuring his left arm and shoulder and increasing the radiculopathy into his left upper quadrant.

Claimant underwent several epidural injections at the T6-7 level, with the most recent, in February 1998, providing some relief.

Claimant has undergone treatment with numerous doctors, including his family doctor, Kevin D. Norris, M.D., neurosurgeon Paul M. Arnold, M.D., and orthopedic surgeon Michael L. Smith, M.D.

The dispute in this matter centers around an automobile accident which occurred on March 13, 1998, while claimant was working for respondent. Claimant alleges, as a result of that accident, his back was made significantly worse. Respondent contends claimant's back condition is the same as before the accident, with the accident providing, at most, a temporary aggravation of claimant's symptoms.

This matter originally went to preliminary hearing on October 20, 1999. After that preliminary hearing, the Administrative Law Judge denied claimant benefits, finding the evidence does not support claimant's contention that his symptoms are attributable to his March 13, 1998, work accident versus a natural progression of the preexisting herniation from 1993. That October 25, 1999, Order from Administrative Law Judge Benedict was not appealed. While the Administrative Law Judge did not discuss in that order which

medical evidence he relied upon, it is clear from the preliminary hearing transcript that the opinion of orthopedic surgeon Michael L. Smith, M.D., greatly influenced the Administrative Law Judge's decision. In his April 9, 1999, report, Dr. Smith stated that he did not believe claimant's complaints had significantly changed after the automobile accident. He based his opinion on the existence of complaints so severe before the accident to warrant a splenectomy. In addition, he noted that claimant had been diagnosed with a herniated disc at T6-7 and had undergone epidural injections prior to the automobile accident in order to reduce his pain.

A second preliminary hearing was held on February 23, 2000. At that time, claimant submitted the medical report of Ali B. Manguoglu, M.D., a neurosurgeon from Salina, Kansas. Dr. Manguoglu stated that claimant's current symptoms were an aggravation of his preexisting symptoms, with the aggravation coming from the automobile accident in March. Claimant alleges substantially increased pain after the automobile accident.

Respondent, on the other hand, contends that claimant's pain was so severe that on February 12, 1998, he advised Dr. Norris he was having difficulty being on his feet all day at work. On February 23, 1998, an MRI and CT scan were performed, confirming the existence of the T6-7 herniated disc. Claimant was then administered an epidural injection, which did provide him some relief. Claimant testified, however, that, after the automobile accident, his symptoms were worse.

As a result of the dispute and by agreement of the parties, claimant was referred to Sergio Delgado, M.D., an orthopedic surgeon, in Topeka, Kansas. Dr. Delgado's February 23, 2000, report was placed into evidence after the preliminary hearing also by agreement of the parties. There was some dispute regarding the timing of the report, as it was originally ordered into the record within five days of the February 23 preliminary hearing. However, as Dr. Delgado's fax machine was apparently broken on February 28, 2000, it was provided to the parties and the court on February 29, 2000. As the report was available for the Administrative Law Judge's consideration in making his decision, it is a part of the record.

Dr. Delgado, in his report, opined that claimant's herniated nucleus pulposus at T6-7 is a preexisting condition from the original injury. Dr. Delgado did not consider the March 13, 1998, automobile accident to be an aggravating factor.

The Administrative Law Judge, in the Order Denying Compensation, simply stated that an order granting medical treatment against respondent should be denied. No additional explanation was provided.

The Appeals Board finds that the Administrative Law Judge's decision should be affirmed. While Dr. Delgado and Dr. Manguoglu disagree regarding the effect of the automobile accident, it is noted that Dr. Manguoglu, who also treated claimant in 1997, felt claimant might need surgery at T6-7 at that time. In addition, the symptoms portrayed by claimant after the automobile accident are nearly identical to the symptoms displayed by claimant from 1993 through 1998.

Based upon the opinion of Dr. Delgado and the opinion of Dr. Smith, the Appeals Board finds that claimant's motor vehicle accident of March 13, 1998, did not aggravate his condition at T6-7, and the Administrative Law Judge's denial of benefits should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bryce D. Benedict dated March 6, 2000, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of April 2000.

BOARD MEMBER

c: Norman R. Kelly, Salina, KS
Ronald J. Laskowski, Topeka, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director